

**STATE OF NEW HAMPSHIRE
SITE EVALUATION COMMITTEE
(Docket No. SEC 96-01)**

DECISION ON APPLICANTS' MOTION FOR REHEARING

On July 16, 1997, the Site Evaluation Committee (Committee) issued a decision in this docket which granted a request of Portland Natural Gas Transmission Inc. (PNGTS) for a Certificate of Site and Facility pursuant to RSA 162-H to construct, operate and maintain the PNGTS Project, and issued to Maritime & Northeast Pipeline L.L.C. (M&N) and PNGTS a Certificate of Site and Facility pursuant to RSA 162-H to construct, operate and maintain the Joint Facilities.

On August 13, 1997, PNGTS and M&N filed a Joint Motion for Reconsideration, Clarification or Rehearing under RSA 541:3. On August 21, 1997 Counsel for the Public filed an Objection to Applicants' Joint Motion for Reconsideration, Clarification or Rehearing. The Committee received comments from the Town of Shelburne and various citizens concerned with the Applicants' motion and the Decision and Order of the Committee.

In their Motion, PNGTS and M&N requested that the Site Evaluation Committee reconsider and amend portions of its Order and Decision to (1) promote consistency with the Federal Regulatory Commission (FERC) Certificate of Public Convenience and Necessity issued on July 31, 1997; (2) enhance coordination between the various state and federal agencies that will be overseeing construction of the proposed pipelines; (3) eliminate conditions that the Applicants allege are impracticable; (4) ensure that the Site Evaluation Committee's Order is not unjust, unreasonable or confiscatory; and (5) allow the PNGTS project and the joint facilities to be in service by November 1, 1998.

In addition, to the extent that any of the conditions for which the Applicants seek reconsideration have been "specified to the committee" pursuant to RSA 162-H:16, I, "by any other state agencies having jurisdiction, under federal or state law, to regulate any aspect of the construction or operation of the proposed facility," the Applicants request that such agencies reconsider certain of the conditions previously specified by the agency.

The Applicants seek confirmation that as a matter of state law, the Committee's Decision is dispositive of all issues under the applicable state statutes and regulations and under Section 401 of the Clean Water Act.

The Applicants' claim that the Committee's decision is unlawful rests mainly on preemption arguments. The Applicants allege that much of the Committee's decision is preempted either by the Natural Gas Act, 49 U.S.C. Sec. 1671 et seq. or by the Revised Pipeline Safety Act, 49 U.S.C. 60101 et seq. While the Committee will address the Applicants' claims under the two acts separately, the preemption standard is the same for both. Federal preemption traditionally comes in four "flavors", including "express preemption" resulting from an express congressional directive ousting state law, "implied preemption" resulting from an inference that Congress intended to oust state law in order to achieve its objective, "conflict preemption" resulting from operation of the Supremacy Clause when federal and state law actually conflict, even when Congress says nothing about it, and "field preemption" resulting from determination that Congress intended to remove an entire area from state regulatory authority. Hillsborough County v. Automated Medical Laboratories, Inc., 471 U.S. at 713, 105 S.Ct. at 2374. Kinley Corporation v. Iowa Utilities Board, 999 F. 2d 354 8th Cir. (1993).

With respect to the Natural Gas Act (NGA), the Committee rejects the Applicants' preemption claim. The Committee previously ruled in connection with M&N's application that the NGA does not field preempt the Committee from exercising jurisdiction over the Applicants' proposal. See Committee's November 18, 1996, Preliminary Order. Field preemption of state sovereignty requires that Congress express a clear and manifest intention to preclude the states from exercising their traditional authority over matters of local concern. Cipollone v. Liggett Group, Inc., 120 L.Ed.2d 407, 422 (1992); San Diego Building and Trades Council v. Garman, 359 U.S. 236, 244 (1959). Congress enacted the NGA in response to Supreme Court decisions under the Commerce Clause of the Constitution that prohibited the states from directly regulating sales for resale and the quantities of gas transported in interstate commerce (the "Attleboro gap"). See Illinois Natural Gas Co. v. Central Illinois Public Service Co., 314 U.S. 498 (1942) (describing history leading to enactment of NGA).

Section 1(b) of the NGA and its legislative history establish that Congress intended to give the federal government the power to regulate the Attleboro gap without usurping state authority over matters of local concern. 15 U.S.C. §717(b); Federal Power Commission v. Panhandle Eastern Pipe Line Co., 337 U.S. 498 (1949). Courts may not infer that the NGA preempts the states from regulating within their traditional areas of authority simply because the states did not historically have the power to directly regulate interstate commerce under the Attleboro doctrine. The NGA preserves state authority over matters which the states otherwise have the authority to regulate under the Commerce Clause, field preempting only those areas within §1(b) that were traditionally prohibited to the states.

Within the states' traditional authority, the appropriate analysis with respect to the NGA is that of conflict preemption. Under this doctrine, state regulation which conflicts with federal authority is preempted "to the extent that it actually conflicts with federal law, that is, when it is impossible to comply with both federal and state law . . . or where state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." Silkwood v. Kerr-

to the accomplishment of the full purposes and objectives of Congress.” Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 248 (1984)(citations omitted). In general, the Applicants’ Motion does not demonstrate that it is impossible to comply with both FERC requirements and the contested Committee and NHDES conditions, or that New Hampshire’s requirements will obstruct Congress’ purpose in enacting the NGA. While the Applicants argue that certain SEC conditions are in conflict with FERC requirements, not only the Committee but FERC itself disagrees.

In its Final Certificate for the Joint Facilities, FERC noted that there is no conflict between the SEC decision and conditions, and the FERC’s conclusions, with the exception of the Exeter River crossing and possibly the NHDES EIs’ authority. Order Issuing Certificates and on Rehearing, July 31, 1997, FERC Docket Nos. CP97-238 and CP96-178 (hereafter “Final Certificate”). Similarly, in the FEIS for the PNGTS project, FERC declined to adopt all of the Committee’s recommendations as part of its certificate, but concluded that, with the possible exception of the NHDES EIs, they were not in conflict with FERC requirements. Final Environmental Impact Statement for PNGTS Project and PNGTS/Maritimes Phase II Joint Facilities Project, September 1997, FERC Docket Nos. CP96-249 and CP97-238 (hereinafter “PNGTS FEIS”), response to comment S3-1. In its Final Certificate, FERC found:

The NH Site Committee’s Decision incorporates 54 environmental conditions recommended by the New Hampshire Department of Environmental Services as well as several additional conditions recommended by the New Hampshire Public Utilities Commission and the Pease Development Authority. 43/ Many of these conditions parallel conditions and requirements that we are imposing, and are not in conflict with our requirements, with the following exception. 44/

Final Certificate at 38. In footnote 43, FERC concluded that, “[NHDES] Conditions Nos. 11 through 16 relate to the state’s Clean Water Act clearance over which this commission has no jurisdiction. We note, however, that those conditions do not conflict with the environmental mitigation conditions the Commission is imposing on the Applicants.” Id. Similarly, in the PNGTS FEIS, FERC noted that implementation of the ten landowner protection conditions in section E of the Committee’s decision would not conflict with FERC’s recommendations. PNGTS FEIS, response to comment S-10.

According to FERC, the sole area of direct conflict between state and federal requirements relates to the Exeter River crossing. Final Certificate at 39. NHDES condition 48 requires a dry crossing of the Exeter River. FERC believes that a dry crossing may not be technically feasible due to the width of the river, but would be willing to consider such a proposal and to amend its order accordingly. Final Certificate at 39. NHDES believes that a dry crossing of the Exeter River is both feasible and preferable, in order to prevent negative environmental impacts. The river is designated as a “rural river” under the New Hampshire

Rivers Management and Protection Act, RSA 483:15, XI, and the Applicants' proposed crossing is upstream of the Town of Exeter's drinking water intake. See Final Environmental Impact Statement for PNGTS/Maritimes Phase I Joint Facilities Project, July 1997, FERC Docket Nos. CP96-347 and CP97-238 (hereinafter "Joint Facilities FEIS"), at 5-18.

The only other area of potential conflict identified by FERC relates to the authority to be delegated to the NHDES EIs. In footnote 44 of the Final Certificate, FERC cautioned that the authority of the NHDES EIs "cannot include the ability to modify any specific requirements of this Commission's Order. Modifications to the Conditions of this order may only be granted by the Director of OPR or by the Commission." Final Certificate at 39. Similarly, in the PNGTS FEIS, FERC noted that state inspectors could not request the use of any technique that would conflict with the FERC Certificate, or request that the pipeline be relocated. PNGTS FEIS, response to comment S3-11.

In response to the Applicants' Motion, the Committee will modify the two conditions which were of concern to FERC. With respect to the Exeter River, NHDES has revised condition 48 to require the Applicants to use their best efforts to demonstrate to FERC that a dry crossing of the Exeter River is feasible. The Applicants' submission to FERC should point out that FERC has already approved the Applicants' proposal to perform the crossing at low flow and in coordination with an upstream dam owner to further restrict flow. Joint Facilities FEIS at 5-18. Under these low flow conditions, NHDES believes that the Applicants' criteria for a flume crossing, as laid out in its April 30, 1997, response to NHDES data requests, will be met. If this information does not persuade FERC that a dry crossing is feasible, the revised NHDES condition 48 will allow a wet crossing in accordance with FERC requirements and the remaining DES conditions.

The attached outline of the duties and responsibilities of the NHDES EIs demonstrates that their role does not conflict with FERC requirements. The Committee's authorizing statute bars the Committee from delegating to an individual agency the power to modify the Committee's decision. See RSA 162-H:4, II. The Applicants developed the concept of the NHDES EIs as a way to allow the project to go forward despite the fact that they had not provided NHDES with complete information about the entire pipeline route. The EIs have authority to "specify construction techniques" for the "survey gap" areas, for which complete information was not available for timely NHDES review. EIs may "specify" only those construction techniques which have already been approved by the Committee - i.e., those contained within the ECP, which was also approved by FERC. Beyond this narrow power to specify which of several approved construction techniques may be used, the primary role of the NHDES EIs will be to monitor and observe the construction and alert the Applicants immediately to any permit violations. As their described duties indicate, the NHDES EIs will not have the power to stop or unreasonably delay construction of the pipeline. They will be familiar with FERC requirements and coordinate with both FERC's and the Applicants'

personnel during construction. In light of their lack of authority to modify FERC or Committee requirements, the Committee believes that a conflict is unlikely.

In conjunction with their preemption claims, the Applicants argue that the NHDES conditions exceed the State's water quality certification authority under § 401 of the Clean Water Act, 33 U.S.C. §1341. The Committee rejects this assertion. All of the substantive NHDES conditions focus on the protection of the state's waters and aquatic species, as required under New Hampshire statutes and administrative rules. These conditions are "appropriate requirements of State law" and are properly incorporated into the §401 certification under 33 U.S.C. § 1341(d). See PUD v. Washington Dept. of Ecology, 128 L.Ed.2d 716 (1994).

Finally, the Applicants make a preemption argument under the Revised Pipeline Safety Act ("RPSA"). The RPSA authorizes the federal Department of Transportation ("USDOT") to establish minimum safety standards for all interstate gas pipelines. Unlike the NGA, the RPSA contains express language with respect to the State's role:

A State authority that has submitted a current certification under section 60105(a) of this title may adopt additional or more stringent safety standards for intrastate pipeline facilities and intrastate pipeline transportation only if those standards are compatible with the minimum standards prescribed under this chapter. A State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation.

49 U.S.C. § 60104(c). The language barring states from imposing their own safety standards on interstate pipelines has been read by the courts as express preemption of that specific area. See, e.g., Kinley Corp. v. Iowa Utilities Div., 999 F.2d 354 (8th Cir. 1993). However, the RPSA clearly contemplates that states may be actively involved with other areas of pipeline safety. States may act as USDOT's agent with respect to interstate pipeline facilities. 49 U.S.C. § 60107(a)(2). When certified by USDOT, a state may adopt and enforce their own safety standards with respect to intrastate pipelines. 49 U.S.C. § 60105(a). States are not preempted from charging reasonable fees for performing safety inspections of gas pipelines as authorized under federal law. ANR Pipeline Co. v. Iowa State Commerce Comm'n, 828 F.2d 465 (8th Cir. 1987); Tenneco Inc. v. Public Service Commission of West Virginia, 489 F.2d 334 (4th Cir. 1973), cert. denied, 417 U.S. 946.

The Committee's decision, as revised pursuant to the Motion for clarification, is consistent with the RPSA and the cases interpreting it. As the Committee made clear during its hearings, it was acting not only as a permitting body with the authority to impose specific standards, but also as a fact finder inquiring into the specifics of the pipeline proposal and the effect it will have on New Hampshire's communities and environment. In this latter capacity,

the Committee included in its decision analysis and recommendations intended to apprise federal decision makers of the State's views and the facts supporting those views.

In its original decision, the Committee acknowledged that the USDOT is responsible for establishing pipeline safety standards for interstate pipelines. The Committee does not assert authority independent of the USDOT with respect to pipeline safety. However, the NHPUC has been certified by USDOT with respect to intrastate pipelines, and expects to be delegated inspection authority with respect to the Applicants' project. In light of the state's role, the Committee is entitled to inquire into the Applicants' intentions with respect to the USDOT requirements, and to make recommendations to the USDOT with respect to appropriate mechanisms for satisfying these requirements. In addition, the Applicants agreed to undertake certain safety measures, which were included as conditions. These conditions have been clarified in response to the Applicants' Motion to ensure that they accurately reflect what the Committee understands the Applicants have agreed to do.

The RPSA does not preempt the State from recovering the cost of safety inspections it performs as the delegee of the USDOT. The condition requiring the Applicants to pay for safety inspections is intended to take effect only upon USDOT delegation of inspection authority to the NHPUC, and only if this delegation does not carry with it sufficient funding to accomplish the inspections. Therefore, this requirement is within the Committee's authority.

In light of the foregoing legal analysis, the Committee has reviewed the Motion filed by the Applicants. The Committee finds the Applicants have not demonstrated that the Decision and Order is unlawful, unreasonable or unjust, or contrary to law. While several assertions raised have caused the Committee to re-examine their analysis, no new evidence or argument was proffered that is material to the overall findings and conclusions. For that reason and the reasons set forth below, the Motion for Rehearing pertaining to vacating or setting aside the Decision and Order or any of the conditions attached thereto will be denied, but the Committee will attempt to clarify some of the conditions by revising or amending the conditions. The Committee will address each condition where the Applicants raised an issue, although it is believed that the Committee has comprehensively addressed all of the issues and arguments raised in the Committee's decision and order. To the extent that a ground for rehearing, reconsideration, amendment, modification or changes, has not been addressed herein, it is deemed denied. The Motion filed by the Applicants do not refer to any new evidence to be presented therefore the Committee will decide the Motion as a Motion to clarify, revise or amend the conditions imposed.

The Committee will now address each specific condition where the Applicants have requested revision, reconsideration, amendment, modification or changes in its decision and order. Revised conditions attached to this decision will reflect any changes, amendment, or clarification made below.

Orderly Development: The Applicants request that the requirement to file alignment sheets for approval within 30 days be eliminated and they be allowed to proceed through negotiation with the towns. Upon completion of the discussions and subsequent field surveys, new alignment sheets would be prepared and filed with the state agencies. The Committees' experience dictates that the Applicants must adhere to their own requirements to proceed in such a manner that the project will meet the in-service date of November 1998. Therefore, the Committee denies the Applicants' request, but will allow the deadline for filing alignment sheets to be amended to December 15, 1997 for the Shelburne revisions, and October 15, 1997 for the Newton revisions. The Committee also instructs the Applicants to promptly provide all available information about the revised routes to the appropriate state agencies, in advance of these filing deadlines.

EFSEC Condition 1: The Applicants request that in lieu of new easements being negotiated and recorded that a blanket release of all rights obtained in the 231 original easements in excess of those specified in the said PNGTS exhibit 26, which release shall be granted without requirement that full consideration paid for such rights be refunded to the Applicants. The Committee finds that this request is reasonable. The request is granted subject to the Applicants submitting a copy of the release instrument, along with a copy of the landowner fact sheet pursuant to EFSEC Condition 7, to each and every property owner who previously negotiated an easement. The blanket release shall be recorded in each County Registry of Deeds, with appropriate deed references to ensure inclusion in each property owner's chain of title.

In addition, to accomplish the goal set by the Committee to treat all landowners equally, the Committee will modify Condition 1 to require the Applicants, simultaneous with the provision of the release and fact sheet, to inform all landowners who previously executed easements that if they feel aggrieved by the manner in which the negotiations took place or feel they were unjustly treated, they may request a meeting with the pipeline officials who have agreed that they will meet with the landowner to discuss the matter. All requests for such a meeting shall be made within 30 days of receipt of the information or fact sheet.

EFSEC Condition 4: The Applicants request that this condition regarding work schedules to residential areas be amended and modified to allow certain work, such as surveying and other activities, on a seven day per week schedule. The Committee grants the request to the extent that non construction activity (activity that does not involve machinery, excavation or other earth moving equipment or equipment that makes loud noises) will be permitted on a seven day per week schedule.

EFSEC Condition 5: The Applicants seek clarification that the requirement contained in the condition to ensure future access is limited to this purpose (forest product harvesting) and that access points will be agreed upon by the Applicants and the landowner. The Committee adopted this condition to ensure that property owners would be able to harvest wood products

from their land and have access to and from said land at no expense to the property owner. The Applicants' request to limit the condition to perpendicular access is reasonable as the Committee did not envision the pipeline easement as a way for logging trucks. The intent of the condition is not to alter the ability of the current landowner, or any future landowner, to do logging now or in the future. The condition will be revised to clarify the intent of the Committee.

EFSEC Condition 6: The Applicants object to the distance of 300 feet from the construction activity for pre- and post-construction well testing and for pre- and post-blast surveys and to the requirement for public notice. The Applicants agrees to the requirement of well yield and water quality testing pre-and post-construction within 200 feet of pipeline construction. They will also commit to their ECP Section 5.1 that all wells within 200 feet of the construction ROW be inventoried and inspected before and after blasting. The Committee has reviewed the record and although the North Country Council recommended a distance of 300 feet, the record does not disclose any standard that established the distance of 300 feet as an accepted industry standard for construction of pipelines. The 300 feet requirement was proposed to eliminate or prevent liability on the Applicants. Under the circumstances the Committee finds that 200 feet, which is 50 feet more than required by FERC, is a reasonable distance and the Committee will amend this condition to 200 feet as the requirement for wells to be eligible for well tests, at no cost to the owner, before and after blasting activities.

EFSEC Condition No. 7: The Applicants request that the language requiring them to "affirmatively explain the landowners' rights" be deleted from this condition. The Committee finds this request reasonable and will eliminate the requirement to explain the landowners' rights. The clarified condition will require the Applicants to:

Prepare a landowners fact sheet and distribute a copy to each landowner whose property will be affected by the construction. The fact sheet should explain in clear, nontechnical language what the pipeline companies are willing to do with respect to land owner's concerns. During face to face interactions, the Applicants should affirmatively explain the material in the fact sheet and outline the procedures the land owner should be aware of concerning issues of eminent domain and or easements, and answer any questions the landowners may have about these issues. The fact sheet should also inform the landowner that they are entitled to retain an attorney for legal advice.

EFSEC Condition 10: The Applicants request that the Committee revise this condition to read, "Certificate approval does not grant authority to remove buildings in the Additional Temporary Work Space areas, unless requested in writing by the landowner and agreed to by the Applicants and the landowner." This request is granted.

NHDES Conditions 5, 8-10,13,16,18,19-21,24-31,35-38,41: The Applicants objects to the decision-making authority specified in these conditions, alleging that such authority exceeds

NHDES' authority under Section 401. This request is denied - see legal discussion above.

NHDES Condition 1: This condition imposes the standard fee based on proposed impacts in wetlands in accordance with RSA 482-A:3 and NHDES rules. In accordance with NHDES' customary interpretation of these provisions, the Committee denies the Applicants' request to refund a portion of the fee based on differences between proposed and actual impact.

NHDES Condition 2: The Applicants request that this condition be revised to require that the "as-built construction plans be filed by December 31, 1999. The Committee grants this request and the condition shall read, "Final "as-built" construction plans of the pipeline shall be submitted to the Commissioner, NHDES no later than December 31, 1999. Any impacts to wetlands and uplands not currently reflected in the construction plan shall be subject to additional fees."

NHDES Condition 3: A list of duties and responsibilities for the NHDES EIs is attached. The NHDES EIs shall be familiar with the EFSEC conditions and the FERC condition. They would not have "stop work " authority but would have the authority to request a contractor to stop or correct a particular task when environmental impact is being caused. The Applicants' request to have input in the selection of inspectors is denied. The request that inspector only receive compensation for the time they are actively engaged in work as outlined in the list of duties and responsibilities is granted.

NHDES Condition 5: The Applicants request that with respect to review and approval functions prior to commencement of construction, the time limit for NHDES decision-making be "ten (10) business days"; and that subsequent to commencement of construction, the time limit for NHDES decision-making be "as soon as practical, but not later than 5 business days." This request puts too heavy a burden on NHDES and is denied. NHDES will respond as quickly as is reasonably possible, typically within 10 days.

NHDES Condition 6: The Committee will grant the request for reports to be filed weekly to coincide with FERC Requirements.

NHDES Condition 8: The Committee grants this request and amends the Condition to read, "All submissions of data and plans to date and other information made to NHDES and to the Committee in this proceeding, and any NHDES approved amendments to the construction plans and specifications, are hereby incorporated into the record supporting the final terms and conditions."

NHDES Condition 9: This request is denied; however, the condition will be modified consistent with Condition 5 above.

NHDES Condition 10: This request is denied; however, the condition will be modified consistent with Condition 5 above.

NHDES Condition 11: Granted. See attached revised language.

NHDES Condition 12: Denied but NHDES will modify the condition to allow the Applicants to utilize a "mixing zone" consistent with its Surface Water Quality Regulations, Env-Ws 430..

NHDES Conditions 14-16: Denied. See legal discussion above.

NHDES Condition 18: Water Bars. Denied.

NHDES Conditions 20-21: Granted. See attached revised language.

NHDES Condition 24: Denied.

NHDES Condition 30: Denied.

NHDES Condition 33: Granted. See attached revised language.

NHDES Condition 35: This request is denied; however, the condition will be modified consistent with Condition 5 above.

NHDES Condition 38: Denied.

NHDES Conditions 42b and 42e: The Applicants' request to clarify the meaning of "dry season" is granted. The remaining requests are denied.

NHDES Condition 47: The condition will allow the Powwow and Winnicut crossings to occur between August 1 and June 1. The reference to FERC hydro articles will also be clarified.

NHDES Condition 48: As discussed above, the condition relating to the Exeter River crossing will be modified to require the Applicants to make a good faith effort to encourage FERC to accept a dry crossing. See attached revised language.

NHDES Condition 52: Granted. See attached revised language.

NHPUC Condition A1: The Applicants request the Committee to revise this condition to read " Applicants will require a notch toughness in the 24" and 30" pipeline specifications to be a

minimum of 25 ft.lb at a maximum test temperature of 32 degrees F.” This request is denied. The Committee’s understanding is that the Applicants agreed to the condition as worded.

NHPUC Condition A5: The Applicants object that several of the identified streams are not major and do not warrant utilization of Class III pipe. The Committee agrees with the Applicants and will eliminate the following streams: Hall’s Stream, Simms Stream,, Austin Mill Brook, Lary Brook, York Brook, Winnicut River, Pickering Brook.

NHPUC Condition A6: The Applicants request the Committee to reconsider the condition that requires Hydrostatic Test design to account for possible increase in population by utilizing one class higher than current requirements. The Committee denies this request.

NHPUC Condition C: The Applicants request that this condition be revised and amended to include the following language after the list of valve locations: “Milepost designations are approximate only. Actual valve placement may vary 1-2 miles from the milepost designation identified above.” And to revise and amend “Major River Crossing: to read: Piscataqua River: Mainline valves shall be located adjacent to west side of river in N.H. and not to exceed approximately 6-7 miles away on east of river in Maine”. This request is granted.

NHPUC Condition D: The Applicants request that the timetable for performing additional total internal inspection by instrumented internal inspection device be in accordance with an industry standard that has not yet been established. The Committee will deny the request as it feels a baseline instrumented internal inspection is necessary for analytical purpose for comparing future inspections. However, the language of the condition has been clarified.

NHPUC Condition E: The Applicants object to the funding of Safety Inspectors. The Committee finds that the condition is reasonable and just. Safety in the construction of the pipeline is of the utmost importance and adequate inspections are necessary. The record shows that the United States Department of Transportation regulates the safety and construction of gas pipelines. The record also indicates that these responsibilities may be delegated to the State’s gas safety inspectors. It is not unreasonable to assess the cost of this expense to the Applicants to the extent that federal funding is not available. The Applicants’ request is denied.

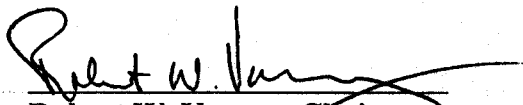
NHPUC Condition F: The Committee has reviewed the lateral jurisdiction issue and finds that, for purposes of safety regulation under the RPSA, each of the laterals is for direct sales to one consumer and falls within the RPSA’s definition of “intrastate gas pipeline facility” meaning a gas pipeline facility transporting gas from an interstate gas pipeline in a state to a direct sales customer in that State buying gas for its own consumption. See 49 USCA 60101:6,6B and 60101:9,9B.

PDA Condition 2: The applicants request to clarify this condition is granted. See

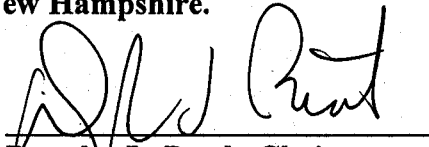
attached Order for language.

The Motion for Rehearing is denied in part and granted in part as set forth above. A Site Committee Order will issue accordingly.

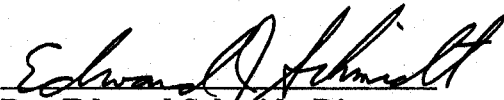
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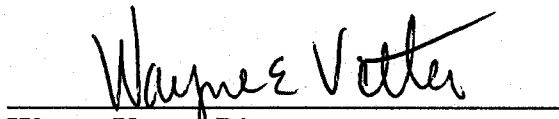
Robert W. Varney, Chairman
Commissioner, Dept. of
Environmental Services



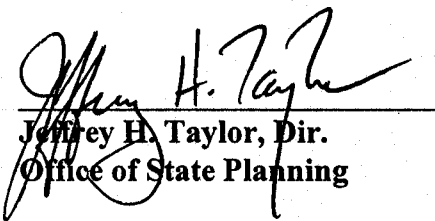
Douglas L. Patch, Chairman
Public Utilities Commission



Dr. Edward Schmidt, Dir.
Water Division, Dept. of
Environmental Services



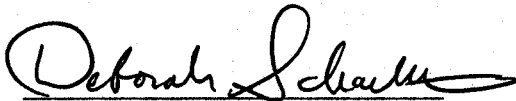
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Fish and Game Dept.



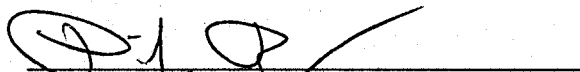
Jeffrey H. Taylor, Dir.
Office of State Planning



Kenneth A. Colburn, Dir.
Air Resources Division, Dept.
of Environmental Services



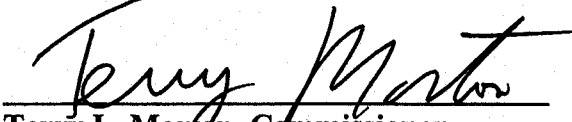
Deborah Schachter, Dir.
Governor's Office of Energy
& Community Services



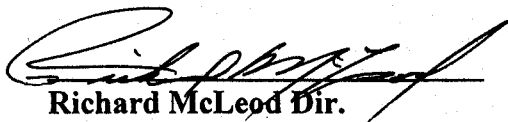
Philip Bryce, Dir.
Division of Forest & Lands, Dept. of
Resources & Economic Development



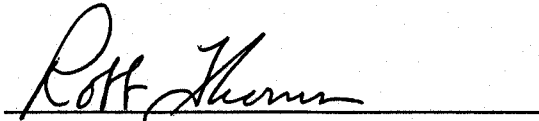
Leon S. Kenison, Commissioner
Dept. of Transportation



Terry L. Morton, Commissioner
Dept. Of Public Health & Human Services



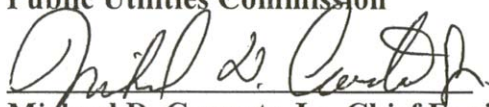
Richard McLeod Dir.
Division of Parks,
Dept. of Resources & Economic Dev.



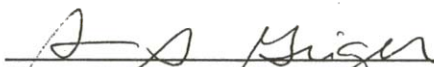
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